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SOL SHEINBEIN
G E ERlich (1995) LTD
C/O ANTHONY CASTORINA
2001 JEFFERSON DAVIS HIGHWAY - STE 207
ARLINGTON, VA 22202

EXAMINER

MCCLELLAN, JAMES S

ART UNIT PAPER NUMBER

3627

DATE MAILED: 03/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/487,719

Applicant(s)

GODDARD, OPHER

Examiner

James S McClellan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-101 and 103-106 is/are pending in the application.
- 4a) Of the above claim(s) 2,4,21-35 and 51-90 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,5-20,36-50,91-101 and 103-106 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Amendment

1. Applicant's submittal of an amendment was entered on February 26, 2004, wherein:
 - claims 1, 2, 4-101, 103-106 are pending;
 - claims 2, 4, 21-35, and 51-90 are withdrawn (Election - 10/9/02); and
 - claims 1, 9, 97, and 104 have been amended.

It is noted that claim 104, line 7 includes an amendment that is not properly marked as a new limitation, wherein the term "alternative" should be underlined. The term "alternative" in claim 104, line 7 was not previously claimed. For purposes of examination, the Examiner assumed the limitation was intentional, but merely not underlined.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1, 5-12, 14-20, 36-42, 44-50, 91-100, and 103-106 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by U.S. Patent No. 6,269,343 (Pallakoff).

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In regards to independent **claim 1**, Pallakoff clearly discloses a system for facilitating aggregate purchasing, the system comprising: **(a)** a database server system (13) for maintaining at least one purchasers group (see column 1, lines 45-49), wherein said at least one purchasers group is established by an operator server (see column 2, lines 48-51) of said database server system, said at least one purchasers group characterized by a plurality of purchasing members, a predefined designation of an aggregation of respectively different products or services and conditions for purchasing said aggregation in accordance with said designation (see column 1, lines 56-59), said conditions including a first price and a quantity (see column 1, lines 56-59, “conditions include prices that depend on the amount of goods”), said database server (13) system being configured to interface sellers (see Figure 1, “Sellers 11a-x”) to said group such as to enable tendering by at least one seller (11) of at least said quantity to said group at a tendering price offered to said group (see column 6, lines 10-14), said system being configured to permit said tendering price to be offered to said group only after said group has been finalized in terms of purchasing members thereby to enable individual purchasers to benefit from aggregated buying power (see column 1, lines 45-49); and **(b)** a plurality of user clients (see Figure 1, “Buyers’ Client Terminals 14a-x”), being at a disposal of a plurality of users (see Figure 1, “Buyers 15”) and being capable of communicating with said database server system (13), each of said plurality of user clients (14a-x) enabling a respective user (15a-x) thereof to join said at least one purchasers group as a purchasing member, such that a user (15) of a respective one of said plurality of user clients (14) is entitled to purchase said designated product under said conditions for purchasing said designated product upon joining said at least one purchasers group, including a best offered tendering price; **[claim 5]** configured such that said plurality of user clients (14a-x)

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communicate with said database server system (13) via a communications mode selected from the group consisting of dialup communications and local area network communication (see paragraph that bridges columns 2 and 3); **[claims 6, 36]** said at least one purchasers group is maintained by said database server for a predetermined period of time (see column 4, lines 7-8); **[claims 7, 37]** said user (15) can join said at least one purchasers group only during a second period of time expiring prior to said predetermined period of time (see column 4, lines 7-8); **[claims 8, 38]** a user is entitled to purchase said designed product following termination of a second time period (see column 4, lines 7-8); **[claims 9, 39]** said conditions for purchasing said designated product are determined as a function of the number of members within said at least one purchasers group at the termination of said second time period (see column 11, lines 25-28); **[claims 10, 40]** said database server system (13; see column 7, lines 31-35) stores and provides on demand to each of said user clients (14a-x) information pertaining to said at least one purchasers group (for example, the number of buyers in the Buying Group; see column 6, line 60); **[claims 11, 41]** information pertaining to said at least one purchasers group includes information on said designated product and to said conditions for purchasing said designated product (see column 1, lines 56-59); **[claims 12, 42]** information pertaining to said at least one purchasers group includes information on a number of members on said at least one purchasers group (see column 6, line 60); **[claim 14]** said conditions for purchasing said designated product include said first price of said designated products, an updated price following said tendering if any terms of payment (see column 3, lines 44-65); **[claims 15, 45]** said designated product group comprises specific products from specific manufacturers (see example on column 6, line 8 that states "200 Brand A widgets"); **[claims 16, 46]** said aggregation comprises services (see column

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2, line 25); [**claims 17, 47**] said designated product is characterized by a specification (23; see column 3, lines 42-43); [**claims 18, 48**] said designated product includes a plurality of specific products bundled together as a single product package (Pallakoff allows users to buy more than one item which would be purchased as a bundle, see column 11, lines 7-37); [**claims 19, 49**] each of said plurality of user clients (14a-x) is a computer operating a web browser and further wherein said database server system (13) is in communication with the World Wide Web (see paragraph that bridges columns 2 and 3); [**claims 20, 50**] each of said user clients (14a-x) is a computer operating a dedicated software program (see column 3, lines 5-10); [**claim 44**] said conditions for purchasing said designated product include a maximum price of said designated products, a reduced price following tendering if any, and terms of payment (see column 3, lines 44-65); [**claim 91, 94**] said tendering is carried out in advance (see Figure 3) of setting up said purchasing group by issuing a schedule of prices for given quantity ranges (see column 3, lines 44-65); [**claims 92, 95**] said tendering is carried out at a predetermined time, provided said minimum quantity has been reached (see column 5, lines 16-37); [**claim 93, 96**] said tendering is carried out in advance of setting up said purchasing group by accepting for said group a seller offering a minimum price for said purchasing number (see column 5, lines 16-37); and [**claim 103**] said quantity is at least two (see column 5, lines 29-32).

In regards to independent **claim 97**, Pallakoff clearly discloses a system for facilitating aggregate purchasing, the system comprising a server (13), the server comprising: a database (see column 7, lines 31-34) configured to maintain at least one purchasers group, said at least one purchasers group being characterized by a predefined product designation, said designation specifying a plurality of respectively products or services and conditions for purchasing said

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designated product or services, said conditions including a first price and a minimum purchase quantity (see column 1, lines 56-59); and an interface (see Figure 2) for interactively interfacing purchasers and sellers to said database (13), said database server system (13) configured, with said interface, to interface sellers to said group such to enable tendering by at least one seller of at least said quantity to said group only after said group has been finalized in respect of purchasers belonging to said group, said tendering comprising a tendering price offered to said group after said group has been finalized, thereby to enable individual purchasers to benefit from aggregate buying power (see column 1, lines 45-49); **[claim 98]** said tendering is carried out in advance (see Figure 3) of setting up said purchasing group by issuing a schedule of prices for given quantity ranges (see column 3, lines 44-65); **[claims 99]** said tendering is carried out at a predetermined time, provided said minimum quantity has been reached (see column 5, lines 16-37); and **[claim 100]** said tendering is carried out in advance of setting up said purchasing group by accepting for said group a seller offering a minimum price for said purchasing number (see column 5, lines 16-37).

Regarding claim 104, Pallakoff discloses a system for facilitating aggregate purchasing, the system comprising: (a) a database server system (13) being for maintaining at least one purchasers group (see column 1, lines 45-49), wherein said at least one purchasers group is established by an operator (see column 2, lines 48-51) of said database server system, said at least one purchasers group being characterized by a plurality of purchasing members, a predefined designation of alternative products or services and conditions for purchasing said product or service in accordance with said designation, said conditions including a first price and a quantity (see column 1, lines 56-59), said database server system being configured to interface

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sellers to said group such as to enable tendering by a plurality of sellers (see column 2, lines 57-60) of alternative products answering to said designation to said group only after said group has been finalized in terms of purchasing members, thereby to enable individual purchasers to benefit from aggregated buying power (see column 1, lines 45-49); and **(b)** a plurality of user clients (14a-x), being at a disposal of a plurality of users and being capable of communicating with said database server system (13), each of said plurality of user clients (14a-x) being for enabling a respective user thereof to join said at least one purchasers group as a purchasing member, such that a user of a respective one of said plurality of user clients is entitled to purchase said designated product under said conditions for purchasing said designated product upon joining said at least purchasers group; **[claim 105]** said alternate products are defined in list (see column 3, lines 11-17); and **[claim 106]** said alternate products are defined by a specification of requirements (see column 3, lines 11-17).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 13, 43, 101, and 104-106 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pallakoff in view of U.S. Patent No. 6,418,415 (Walker et al.).

In regards to dependent **claims 13 and 43**, Pallakoff fails to expressly disclose providing on demand information to each user client on each member of said purchasers group. It is noted

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that Pallakoff discloses storing information on each member of the said purchasers group in a central database, but does not disclose providing the user information to each user client on demand.

Walker et al. teaches providing on demand information to each user client on each member of said purchasers group (see column 5, lines 33-35).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Pallakoff with user information dissemination amongst user clients as taught by Walker et al., because providing user information on demand to each user will allow users to know their business partners and either approve or disapprove the inclusion of potential group members.

In regards to dependent **claim 101** and **claims 104-106** (if it is determined that Applicant intended to add the limitation “alternative” in claim 104, line 7), Pallakoff fails to expressly disclose said specification comprises a plurality of alternate products.

Walker et al. teaches providing a specification comprises a plurality of alternate products (1000; see Figure 2).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Pallakoff with alternative product option as taught by Walker et al., because offering an alternative product provides sellers with the ability to fill a user request when a substantially equal substitute product is available.

Response to Arguments

6. Applicant's arguments filed February 26, 2004 have been fully considered but they are not persuasive.

On page 17, third paragraph, Applicant notes that claim 9 is amended to overcome the objection of the specification. The objection of the specification is withdrawn.

On page 17, fourth paragraph, Applicant notes that claims 1 and 97 have been amended to remove the new matter presented in the October 2, 2003 amendment. The new matter rejection based upon 35 U.S.C. § 112, first paragraph is withdrawn.

On page 17, final paragraph, Applicant notes that claims 1 and 104 have been amended to specify that the group is made up of purchasing members and that the tender offer *price wise* is only presented to the group once the group is finalized in terms of purchasing members. The Examiner notes that the term "price wise" is not a limitation cited in the claims 1 and 104.

On page 18, final paragraph, Applicant argues that in "Pollakof [sic] a tender does *not* occur." The Examiner respectfully disagrees. In Pallakoff, a tender occurs when the final quantity is known (hence when the group is fully formed at the end of the selling period). Applicant argues that Pallakoff is unattractive to users simply because the first members to join a group obligate themselves to pay the initial high prices in the curve if no other purchasers subsequently join the group. While Applicant's statement may have merit; the statement fails to provide evidence that Pallakoff lacks features of the claimed invention. Applicant notes that Pallakoff displays demand thresholds and associated prices in Figure 5. Applicant is erroneously comparing step 52 of Figure 5 with the newly added limitation of "said system configured to permit said tendering price to be offered to said group only after said group has been finalized in

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terms of purchasing members.” In step 52 of Pallakoff, a price per unit is displayed but it does constitute a tendering price to be offered to said group. A tendering price is only calculated once the entire quantity is known (at the time the group is fully formed). When would the first buyer (hereinafter “Buyer #1”) in a group know the offered price in Pallakoff’s system? According to Applicant’s interpretation, Buyer #1 would know the final offering price beforehand. However, Buyer #1 would not know (hence be offered) a tendering price until the final quantity is known. Additionally, Applicant argues that in the present claim (the examiner assumes applicant is referring to claim 1) there is only a single tender price for a single quantity and that price only exists after the group has been finalized. First, Applicant is arguing limitations not found in the claims. The claims fail to require “a *single* tender price for a *single* quantity.” Secondly, using the demand thresholds in Pallakoff, there is also “a *single* tender price for a *single* quantity.” Clearly, Pallakoff does not teach multiple prices for a single quantity.

On page 20, first full paragraph, Applicant argues that there is no real competition in Pallakoff. Once again, Applicant is arguing limitations not found in the claims. Claim 1 merely requires, “tendering by *at least one* seller” (emphasis added).

On page 20, final paragraph (continued on page 21), Applicant argues that Pallakoff does not allow the purchaser group to review the offers made by the tenders. Again, Once again, Applicant is arguing limitations not found in the claims. Claim 1 does not require the purchasing group to review offers. As set forth above, claim 1 merely requires “at least one seller.”

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On page 22, final paragraph, Applicant diagrams differences between the present invention and Pallakoff. Applicant's diagram has been considered but fails to define limitations in the claims that are not disclosed in Pallakoff.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jim McClellan whose telephone number is (703) 305-0212. The examiner can normally be reached on Monday-Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski, can be reached at (703) 308-5183.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

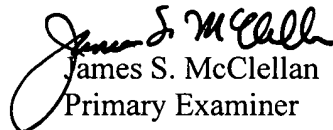
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or faxed to:

(703) 872-9306 (Official communications) or
(703) 746-3516 (Informal/Draft communications).

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive,
Arlington, VA, 7th floor receptionist.


James S. McClellan
Primary Examiner
A.U. 3627

jsm
March 11, 2004